Written Testimony of the
Connecticut Siting Council

Submitted to the Energy and Technology Committee

In Reference to Raised Bill No. 888
An Act Concerning Wireless Broadband
February 21, 2013

Good afternoon Senator Duff, Representative Reed, ranking and distinguished members of the Energy and Technology Committee.

Thank you for the opportunity to provide testimony in connection with Raised Bill No. 888 An Act Concerning Wireless Broadband.

In 1996, the Federal Communications Commission (FCC) recognized a nationwide need for wireless telecommunications services and Congress passed the Telecommunications Act, which preempts jurisdiction of state and municipal agencies over several factors normally considered during the application process for the siting of cellular facilities.

Sections of Raised Bill No. 888 seek to resolve disconnects between the 1996 Federal Telecommunications Act and the Connecticut Siting Council's (Council) current statutes. We believe the intent of this proposed legislation is to define federal limitations relative to the siting of cellular facilities. However, we are concerned with several aspects of the proposed bill.

Section 1. The **first part of this section** seeks to make changes to CGS Section 16-50p that delineates the timeframe for the Council to render a decision on applications for CATV and telecommunications towers. The language seeks to change the statutory timeframe for decisions on applications for new telecommunications towers from 180 days to 150 days to be consistent with the FCC 2009 Declaratory Ruling known as the "Shot Clock." The ruling requires state and local land use agencies to render a decision on a new tower application within 150 days. The ruling also allows for a 30-day completeness review period for a state and local land use agency to review an application for sufficiency. The FCC ruling on time constraints for application review and decision were vague as to whether the 30 day completeness review should be included in or added to the 150 days allowed for decision. The Council chose the latter option which gives more time for review, often eliminating the need to request an extension or deny an application without prejudice. This practice has not been called into question since the passage of the "Shot Clock." While we would prefer to retain the longer decision period, the options of requesting an extension or denying without prejudice are always available and can be exercised when needed.

The **second part of this section** seeks to make changes to CGS Section 16-50p that specifically delineates when the Council may deny an application for a telecommunications tower. The first change contains language that seeks to separate out public safety concerns from the clause that addresses substantial affects to the scenic quality of the location/surrounding neighborhood and

to qualify a proposed facility in this new clause as a "state facility." It is unclear what is meant by a "state facility" since there is no definition of "state facility" presented in the proposed legislation nor is there an existing definition under CGS §16-50i. However, what this revised clause seems to indicate is that the Council can only deny a facility if it determines there aren't any public safety concerns that would require a state-owned facility to be constructed at that location. This seems unduly restrictive. The second change adds language relative to a mandatory presumption of public need presumably to be consistent with the preemptive jurisdiction of the FCC on the question of public need for **cellular service**. As drafted, the proposal does not specify the FCC preemption on the finding as public need for service but states, "the Council shall be limited to consideration of a specific need…" which arguably limits the Council's discretion on this issue to the extent the Council can exercise jurisdiction.

Section 2. This section seeks to make changes related to the location of cellular facilities on state land deeming them not to be in conflict with a public purpose. It should be noted that this issue, as it relates to alternate sites, routinely arises during the Council's public hearings held in host communities. However, this is a decision that should be influenced by the agencies directly affected.

Clarity is always useful in applying statutes to decisions especially when federal statutes preempt portions of state jurisdiction. We find this proposed legislation serves to more clearly define federal limitations relative to the siting of cellular facilities. On that basis, we support the passage of Raised Bill No 888 as long as our concerns are addressed.

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